



# INDEX

	Page
Opinions below.....	1
Jurisdiction.....	1
Questions presented.....	2
Statutes and regulations involved.....	2
Statement.....	3
Argument.....	6
Conclusion.....	10

## CITATIONS

### Cases:

<i>Bowles v. Franceschini</i> , 145 F. 2d 510.....	7
<i>Bowles v. Seminole Rock &amp; Sand Co.</i> , 325 U. S. 410.....	5
<i>Bowles v. Sisk</i> , 144 F. 2d 163.....	8
<i>Good Luck Glove Co. v. Bowles</i> , No. 618.....	3, 6
<i>United States v. San Francisco</i> , 310 U. S. 16.....	8
<i>United States Gypsum Co. v. Brown</i> , 137 F. 2d 803, certiorari denied, 320 U. S. 799.....	9
<i>Wells Lamont Corporation v. Bowles</i> , 149 F. 2d 364, certiorari denied, October 8, 1945, No. 181.....	6, 8

### Statutes:

Emergency Price Control Act, as amended:	
Sec. 204 (e).....	9
Sec. 205 (d).....	7
Sec. 205 (e).....	3

### Miscellaneous:

Revised Procedural Regulation No. 1, 7 F. R. 8961.....	8
S. Rep. 931, 77th Cong., 2d Sess.....	7

(I)



# ***In the Supreme Court of the United States***

OCTOBER TERM, 1945

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No. 617

INDIANAPOLIS GLOVE COMPANY, A CORPORATION,  
PETITIONER

v.

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF  
PRICE ADMINISTRATION

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH  
CIRCUIT

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## **BRIEF OF THE RESPONDENT IN OPPOSITION**

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### **OPINIONS BELOW**

The district court rendered no opinion. Its findings of fact and conclusions of law are set forth on page 192 of the Record. The opinion of the Circuit Court of Appeals (R. 194-202) is reported in 150 F. 2d 597.

### **JURISDICTION**

The judgment of the Circuit Court of Appeals was entered on August 3, 1945 (R. 203). A petition for rehearing was filed on August 18, 1945

(R. 205) and was denied on August 28, 1945 (R. 223). The petition for a writ of certiorari was filed on November 20, 1945. Jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. Code 347 (a)).

#### QUESTIONS PRESENTED

1. Whether under the General Maximum Price Regulation as amended by amendments 23 and 38, the maximum price at which a manufacturer of work gloves may sell certain models of such gloves is the highest price at which it actually delivered such models in March 1942, or its offering price for such models in March 1942, where the only deliveries of such models were made under contract before March 1942.

2. Whether by virtue of the provisions of Section 205 (d) of the Act, the fact that the petitioner in violating a regulation issued under the Act acted in the good faith belief that it was complying with the regulation constitutes a defense to an action under Section 205 (e) of the Act.

3. Whether the Administrator is estopped from maintaining the action.

4. Whether petitioner was deprived of adequate opportunity to challenge the validity of the regulation and thus deprived of due process of law.

## STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are the same as in *Good Luck Glove Co. v. Bowles*, No. 618.

## STATEMENT

Alleging that the petitioner had violated the General Maximum Price Regulation by selling between October 6, 1942 and October 6, 1943 various models of gloves at prices in excess of those at which petitioner actually delivered the same models in March 1942, the Administrator brought this action to recover statutory damages under the provisions of Section 205 (e) of the Act.

There is no dispute as to the facts. Petitioner is a manufacturer of work gloves making over 500 different models. On March 21, 1942 it published a new price list, fixing prices as to all items higher than the prices it had previously charged (R. 145, 149). Approximately 300 styles of gloves were delivered during March 1942 only at prices lower than those quoted in the March 1942 price list (R. 150, 172). All such deliveries were made under contracts antedating March 1942. After the effective date of the General Maximum Price Regulation petitioner sold the particular models at prices higher than those at which it had actually delivered them in March 1942, namely, the prices shown on its March 1942 price list. (R. 149). After March 21, 1942 peti-

tioner accepted no orders for gloves except at the prices established by the price list of that date or in accordance with trade differentials in the case of gloves not listed. (R. 149). The parties stipulated that on March 2, 1943, the Administrator notified petitioner that the prices which it was then charging and receiving for certain models of its work gloves were in excess of the maximum prices permitted by the General Maximum Price Regulation (R. 145); that this was the first notice petitioner had received that the Administrator claimed that it was violating the regulation; (R. 146) that petitioner immediately upon receipt of the notice ceased to deliver gloves and did not deliver any until after the receipt of a letter from the Indianapolis Office of the Office of Price Administration on March 18, 1943, containing the following paragraph (R. 146):

We have sought but not yet obtained a clarification of your position from the Regional and National Offices. We have been advised, however, that information is being assembled by the National Office for use in preparation of a specific regulation establishing maximum prices for work gloves applicable to the entire industry. Believing that the present situation constitutes a serious impediment to the production of goods and materials essential to the prosecution of the war, we see no alternative other than to advise you to proceed with

shipments on the basis of your March 21, 1942, list prices pending a definite ruling and decision by the Cleveland or Washington Offices. It is understood that this does not legalize or validate the prices charged from May 11, 1942, the date the General Maximum Price Regulation became effective up to the present time.

This letter was revoked on August 28, 1943 (R. 146, 163).

It was also stipulated that petitioner had not wilfully violated the regulation by its sale of gloves during the times referred to in the complaint; and what it did in the sale of its gloves, it did in the belief that it had the right to do under the applicable regulations. (R. 147.)

The district court granted judgment for the petitioner (R. 182). The Circuit Court of Appeals reversed the judgment and remanded the cause for further procedure on the authority of the decision of this court in *Bowles v. Seminole Rock & Sand Co.*, 325 U. S. 410.

The Circuit Court of Appeals held that the General Maximum Price Regulation established the maximum price at which a seller might sell a commodity at the maximum price at which he had actually delivered the same commodity in March 1942, irrespective of whether the delivery was made under a contract antedated March 1942; that the fact that the petitioner in violating the

regulation had acted in good faith, and in the belief that it was complying with the terms of the regulation was not a defense to an action brought under Section 205 (e); that the Administrator was not estopped from maintaining the action; and that petitioner had, and still has, an adequate opportunity to challenge the validity of the regulation.

#### ARGUMENT

The decision of the court below is clearly right. It is not in conflict with the decision of any other appellate court. Nor does it decide any important question of law which has not already been decided by this Court.

1. The principal question in this case is the same as in *Good Luck Glove Co. v. Bowles*, No. 618, and is treated at pp. 9-17 of the Government's brief in opposition in that case, to which the Court is respectfully referred.

The contention made on pages 21 and 22 of petitioner's brief that the regulation, if construed as the court below construed it, would compel a change in business practices contrary to the provisions of Section 2 (h) of the Act was made and rejected in *Wells Lamont Corporation v. Bowles*, 149 F. 2d 364 (E. C. A. 1945) in which this Court denied certiorari on October 8, 1945. (No. 181, this Term). It is clearly untenable.

2. The fact that petitioner in violating the regulation acted in good faith plainly does not constitute a defense under Section 205 (d)<sup>1</sup> of the Act. That section protects one who acts in good faith pursuant to a regulation issued under the Act, but obviously does not protect one who acts in contravention of such a regulation. *Bowles v. Franceschini*, 145 F. 2d 510 (C. C. A. 1st). As the Senate Committee on Banking and Currency said: "Section 205 (d) does not confer any immunity upon any person who violates any such provision, regulation, order, or requirement." (Sen. Rep. 931, 77th Cong. 2d Sess., p. 26.)

3. Petitioner's contention that the Administrator is estopped from maintaining this action is equally without merit. Assuming that the United States may in certain cases be estopped by the acts of its officers, it certainly cannot be estopped by acts committed beyond the scope of the au-

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<sup>1</sup> The Section reads as follows:

"(d) No person shall be held liable for damages or penalties in any Federal, State, or Territorial court, on any grounds for or in respect of anything done or omitted to be done in good faith pursuant to any provision of this Act or any regulation, order, price schedule, requirement, or agreement thereunder, or under any price schedule of the Administrator of the Office of Price Administration or of the Administrator of the Office of Price Administration and Civilian Supply, notwithstanding that subsequently such provision, regulation, order, price schedule, requirement, or agreement may be modified, rescinded, or determined to be invalid. \* \* \*"

thority of the persons committing them. *United States v. San Francisco*, 310 U. S. 16; *Bowles v. Sisk*, 144 F. 2d 163 (C. C. A. 4th); *Wells Lamont Corporation v. Bowles*, 149 F. 2d 364 (E. C. A.) certiorari denied, October 8, 1945, No. 181 this Term). In this case the Administrator has issued a regulation (Revised Procedural Regulation No. 1, 7 F. R. 8961) prescribing the procedure whereby any person affected by a maximum price regulation might obtain an official interpretation thereof and designating the persons authorized to give such interpretations. The petitioner did not see fit to follow the prescribed procedure. Moreover, the letter on which petitioner relies as raising an estoppel is not, and does not purport to be, an interpretation of the regulation but merely a permission to violate it. Neither the writer of the letter nor anyone else had authority to give such a dispensation.

4. There is no merit to petitioner's contention that it has not had an adequate opportunity to contest the validity of the General Maximum Price Regulation. In amending and extending the Emergency Price Control Act by the Stabilization Extension Act of 1944, Congress repealed the sixty-day limitation for the filing of protests to maximum price or rent regulations. A protest to such a regulation may now be filed at any time. Further, by the same act Congress provided a sec-

ond method for determining the validity of a maximum price or rent regulation. Under Section 204 (e) of the Act (which was added by the Stabilization Extension Act of 1944) the court in which a proceeding to enforce such a regulation is pending may, after judgment, stay the proceedings so as to afford the defendant the opportunity to file a complaint in the Emergency Court of Appeals to test the validity of the regulation. The filing of a prior protest with the Administrator is unnecessary. If the Emergency Court of Appeals holds the regulation invalid then, the section provides, the enforcement proceedings must be dismissed. Petitioner, therefore, still has ample opportunity to test the validity of the regulation.

Moreover, if, as petitioner asserts, the regulation is ambiguous (which we deny) and petitioner first learned of the interpretation which the Administrator placed on it on March 2, 1943, then under the statute as originally enacted the sixty-day period within which defendant was entitled to file a protest to the regulation would not begin to run until March 2, 1943. *United States Gypsum Co. v. Brown*, 137 F. 2d 803 (E. C. A.), certiorari denied, 320 U. S. 799. Therefore, even under the statute as it read before being amended, defendant had ample opportunity to challenge the validity of the regulation.

## CONCLUSION

The decision of the court below is plainly right and no reason exists which would warrant its being reviewed by this Court.

Respectfully submitted,

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JANUARY, 1946.

